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Director's Office  
Office of Patent Publication

In re Application of :  
ADLER, PAUL E. :  
Application No. 09/701,455 : **DECISION ON PETITION**  
Filed: February 2, 2001 :  
Attorney Docket No. 30427 :

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent and Trademark Office (USPTO) on April 1, 2005.

The petition is **DISMISSED**.

The above-identified application was held abandoned for Applicants failure to timely pay the issue fee. The Notice of Abandonment mailed on March 29, 2005 indicates, "The submitted fee of \$147 is insufficient. A balance of \$553 is due." Also, noting "Insufficient Funds in Deposit Account."

Petitioner argues:

That the USPTO, by retaining the \$147, agreed to accept partial payment and was obligated to either (a) timely notify the applicant of the deficiency or (b) seek the deficiency from the Deposit Account before the due date of 2/22/05.

That the Deposit Account was replenished on \$1,500 on February 17, 2005 prior to the due date

That the USPTO was given an open-ended authorization on February 10, 2005 to charge the issue fee and any other fee required to Deposit Account 07-1971

The Office acknowledges receipt of Part B – Fee(s) Transmittal on February 15, 2005, as evidenced by the "Office Date" stamp thereon and thereafter scanned as a computer image into the Image File Wrapper (IFW) system. The Fee(s) Transmittal authorized that the Issue Fee, and Advance Order Copies Fee be charged to Deposit Account No. 07-1971.

Unfortunately, on February 16, 2005, when an attempt was made by the Office of Finance to charge the fees, there were insufficient funds in the Deposit Account.

The petitioner therefore has not complied with 37 CFR 1.25 (a) and (b), which states in part:

1.25(a)...An amount sufficient to cover all fee, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted."

1.25 (b)... An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

In light of the non-compliance with 37 CFR 1.25(b), the holding of abandonment cannot be withdrawn.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website <http://www.uspto.gov>)

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application
- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application

Further inquires with respect to filing a petition under 37 CFR 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

*By mail:*                      Mail Stop Petitions  
   Commissioner for Patents  
   Office of Petitions  
   P O Box 1450  
   Alexandria, VA 22313-1450

Telephone inquires concerning this decision matter may be directed to the undersigned at 703 308-9250.



Thomas E. Hawkins  
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